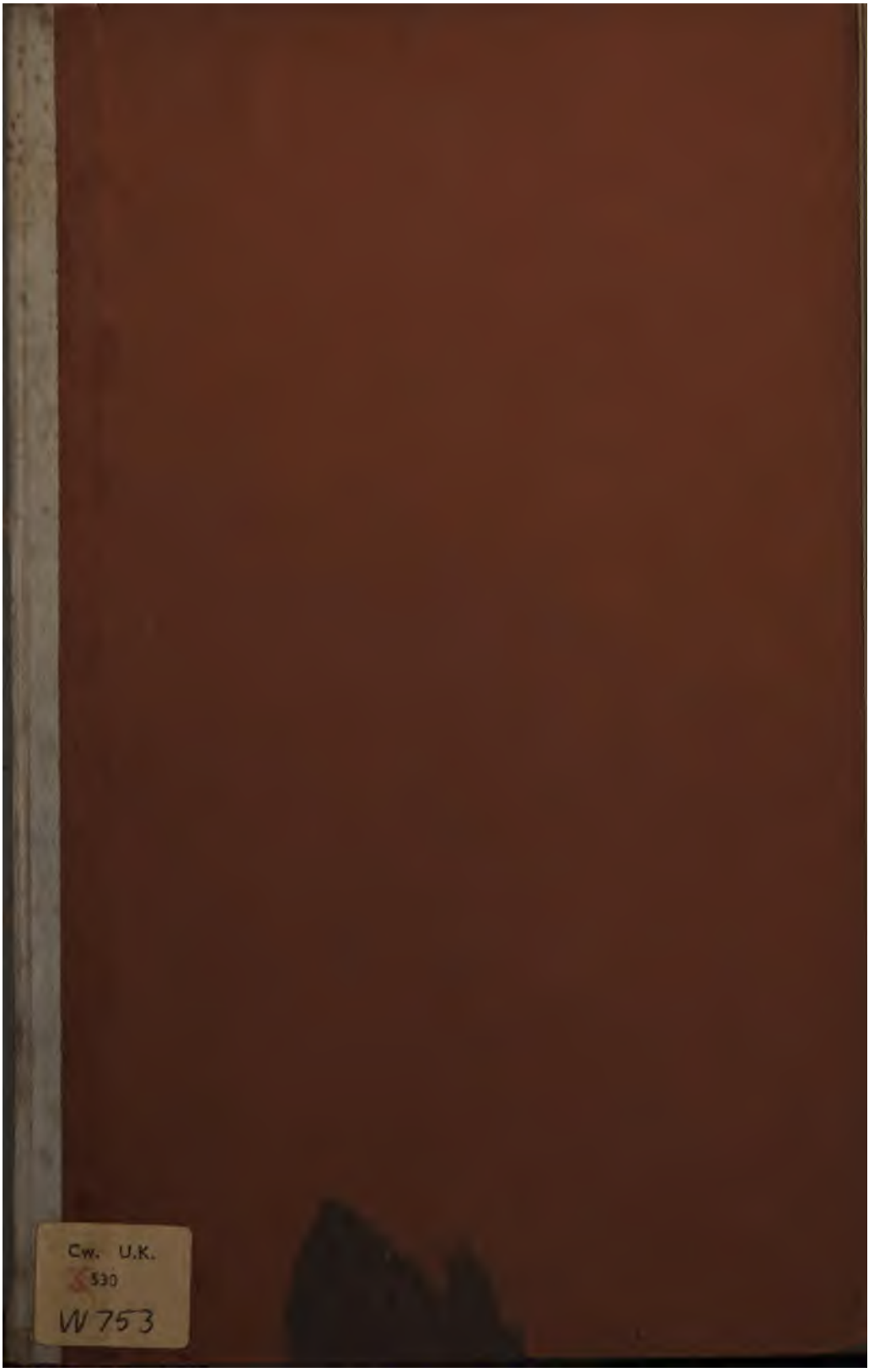

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THE FORMATION

OF

A CODE OF COMMERCIAL LAW

FOR

THE UNITED KINGDOM:

WHY NOT BEGIN NOW?

AN ADDRESS DELIVERED TO

THE CHAMBER OF COMMERCE OF ABERDEEN.

BY

SHERIFF DOVE WILSON, LL.D.

23RD APRIL, 1884.

ABERDEEN:—G. CORNWALL & SONS,

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WHY NOT BEGIN NOW?

In a recent work by Professor Max Müller upon India, he has incidentally occasion to speak of the "burning questions of the day," and he gives them in the following order:—Popular Education, Higher Education, Parliamentary Representation, Codification of Laws, Finance, Emigration, and Poor Law. On first reading this, I was surprised at the place assigned to codification. Although I knew that some considered codification a question now falling within the sphere of practical politics, it would not have occurred to me either to have called it a "burning question," or to have assigned it a place in importance next to Parliamentary Representation. When I came to remember that the distinguished Professor was not by origin a British subject, but was both from his origin and his subsequent pursuits as familiar with what occurs on the Continent of Europe as with what occurs in this country, the place he assigned to codification was explained. All over Europe, in the course of the present century, codification has been an object of the greatest attention from statesmen, and of immense labour from professional lawyers, and it is natural enough that, by one whose standpoint is high, it should be called one of the burning questions of the day.

Before entering upon the question of the codification of the commercial law of the United Kingdom, I shall ask your attention for a short time to what has been done in the way of codifying the commercial laws of other countries, but before entering upon the subject at all, it would be well to settle what it is that we exactly mean by a code. Codification has nothing to do with the amending of the substance of the law. It affects the substance indirectly only. Codification is an amending of the form of the

law. It has for its object the reduction of ill-written, or of unwritten law, into well-written law. This age has been called the age of handbooks, and a code is a handbook of the law of the best kind. A code is an authoritative statement of the whole existing law upon any particular subject, presented in its simplest form. A code, in the first place, is an authoritative statement. It differs in this from ordinary handbooks, which lie always under the necessity of occupying space by indicating the reasons for what they set forth, and by discussing doubtful points. Then, in the next place, a code contains within its four corners the whole law upon its subject. With uncodified laws, any one desiring to know the whole law upon any particular subject has to read the statutes, the decisions, and the so-called institutional writers; and then he has to enquire whether there may not also be some unwritten law upon the subject. The last characteristic of a code is, that it gives the law in its simplest form. When the law has to be extracted from uncodified materials, it is found to contain many blanks, to be overloaded with repetitions, and to be full of ambiguities. The result of setting forth the law in a code in its simplest form, is that it is complete, concise, and easily intelligible. The arrangement of matter in a code is logical, following not the order in which the law happens to have grown up, but what I may call the natural order of the events occurring in the transactions with which it deals. A code also abjures those words in dead or foreign languages which swarm in uncodified laws, and it never uses technical language when ordinary will suffice. The theory of codification is that it is worth while to take some trouble, in order that those persons whose affairs are to regulated by the law, should, if it be in any way practicable, have some idea of its provisions.

The meaning now attached to the word "code" excludes from our view all the earlier attempts at codification. The famous code of Justinian we should now describe as a collection of the materials necessary to form a code. The codes of the early and the collections of laws of the later middle ages fall, for other reasons, equally beyond the scope of the modern definition. The true precursors of the modern code are the commercial and maritime "Ordonnances," prepared in the reign of Louis XIV. by his

distinguished finance minister Colbert, and the code of General Law which Frederick the Great brought into force in Prussia. But all the older codes were partial and incomplete compared with the first of the great modern codes. The first of these is the one carried through by the energy of Napoleon Buonaparte. He divided the whole law dealing with the relations of private individuals into two parts, embodied respectively in the "Code Civil" and the "Code de Commerce." The latter—founded on the work of Colbert—came into force in 1808. It is divided into four books. The first treats of commerce in general, containing titles upon merchants and their books, the law of partnership, brokerage, principal and agent, sale, bills of exchange, and the other different commercial contracts; the second book deals with maritime commerce; the third, with bankruptcy; and the fourth, with jurisdiction in commercial disputes. It goes over a greater field than is now thought necessary to a commercial code—the law of bankruptcy and questions of jurisdiction being better treated separately; and, although the excellence of its arrangements in other respects and the lucidity of its language were conspicuous merits, it failed somewhat from the haste with which it was prepared. It is greatly wanting in the matter of definitions, and in many cases in not entering sufficiently into detail, but it is the law which, nevertheless (with some comparatively unimportant additions), still regulates commercial matters in France, and it has been widely copied in the rest of the world. It came into force in Belgium, when it was passed, and in recent years it has been there subjected to a careful revision. In 1830 it was adopted by Spain, and soon after extended to its colonies. Portugal adopted it in 1833, Greece in 1835, and Holland in 1838. At various other times it has been adopted, either as a whole or in substance, in Russia, Poland, Turkey, and Roumania. On the other side of the Atlantic it is in force in most of the South and Central American States.

Since the time of Napoleon, however, great progress has been made in the art of codification. The subsequent codes of Germany, Italy, and Switzerland show great improvements. The commercial code of the German Empire is divided into three parts—viz., the code of bills of exchange, the code of maritime law, and the

code which contains the remaining portions of the commercial law. The bills code had been adopted in particular states of Germany some time before the Revolutions of 1848, but its adoption for the whole German Confederation was one of the few successful Acts of the short-lived Government of that year. The codification of the rest of the commercial law was then resolved upon, but nothing was done till 1856, when the Confederation appointed a Commission, which took up the matter in two divisions. The Commission for maritime law sat at Hamburg, and that for the remainder of the commercial law at Nuremberg. Their work was completed in 1861. It was the subject of the greatest care; and all the juridical learning, of which Germany has so much at its disposal, was freely given to it. It is a code which is much more complete in every respect, both practical and scientific, than the original Code Napoléon, and indeed its obligations to its predecessor are comparatively small. The arrangement differs considerably. Bankruptcy and jurisdiction are left to be dealt with elsewhere; and the first book of the French code is split up into four, thus enabling a much fuller consideration to be given to the different commercial contracts. There is also less vagueness in the language—the definitions being more precise, and the fault of over-conciseness being avoided. The German language, however, is a clumsy and involved contrivance as compared with the French, and the precision of the German code is laboured, and lacks the elegant clearness of its predecessor. On the completion of the German code in 1861, it was adopted by Prussia, and shortly afterwards by Austria. By 1870 when the German Empire superseded the German Confederation, it had been adopted by all save one or two small States. In 1870 it became one of the laws of the Empire, and since that date it has been in full vigour over the vast regions, and through the dense populations where the German Emperor's authority is recognised.

The commercial code for Italy was first brought into force in 1865, that is, within a very few years of Italy having come to form a single kingdom. The code was mainly founded on the French, which had been previously in force in some of the individual Italian States. The code issued in 1865 was avowedly

temporary. The commission charged with the preparation of the permanent work was formed in 1869, and continued its labours till 1877, when the draft was presented. It took three years to go through the Senate, and nearly other two years to go through the Chamber of Deputies. After passing those bodies it was returned with their amendments to the Commission that the context might be revised so as to see that it contained no inharmonious provisions and no sources of confusion. This revision was completed in 1882, and then the code was adopted *en bloc.* It came into force on 1st January, 1883. The foundation is the Code Napoléon; but large assistance has been obtained from the German code. It may be described as a new edition of the French code brought up to date. It is much fuller in its treatment of the various contracts, and it increases considerably the number treated. It includes commercial transactions in "immovable" property, that is, in what the English call "real" and we, "heritable" property. It regulates the powers of the State, of the provincial governments, and of the city corporations to take part in commercial transactions. It gives also much more prominence to those contracts which, being entered into between residents of different countries, have something international in their character. It deals more fully with partnership, and gives prominence to the contract of carriage by land, which in the old French code was miserably incomplete. It treats of all forms of insurance—fire, life, and marine—and contains other improvements needless to mention. In point of arrangement of matter and clearness of expression, the code does honour to a country whose writers are masters of logical treatment, and who have the good fortune to use a language as excellent for scientific accuracy as it is famous for poetic beauty.

The last of the great modern commercial codes is that for Switzerland. The first serious attempts to form a Swiss code date also from the disturbances of 1848. The necessity for a commercial code in Switzerland was perhaps greater than elsewhere, as there were within a very small space some twenty-four cantons, each asserting its right to deal with commercial law according to its own good pleasure. The only way, however, till recently, by which the evils thus occasioned could be

remedied was by the agreement of the different cantonal legislatures upon the same code. This way of proceeding was known as the proceeding by way of *concordat.* After nearly twenty years' work on it the result was that they had got no further than the law of bills of exchange, and that some of the cantons had adopted the French, some the German, and some a code which was neither the one nor the other. It was seen that any attempt to deal with the whole commercial law in this way would fail; and accordingly, in 1874, an alteration was made on the Swiss Constitution, and power was given to the Central Government at Berne to make a code of commercial law. This code was recently completed. The Commission charged with it was appointed in 1875, and sat till 1881. The labour of the Commission was incessant. It began with a draft which had been formerly prepared with a view to adoption by *concordat.* This it thoroughly revised, and afterwards no fewer than three successive editions were issued before the final text was adopted. This was laid before the Legislature in 1879, and was finally passed in 1881. The Swiss code receives the name of a "Code of the Law of Obligations," but substantially it is a commercial code. It has two texts, the one in French and the other in German, both of equal authority. It follows the order of the German rather than that of the French code, but is in reality an improvement on both. In many respects, both in its treatment of the general law of contracts, and in its treatment of particular contracts, such as sale, it shows a decided advance; and were we to confine ourselves to the imitation of any particular code, the Swiss code, both in its mode of preparation and in its results, would certainly be the best for our purpose.*

* Most of the information here given has been taken from the respective codes themselves which, with introductions and indices, are all published in convenient pocket volumes. The facts as to the history of the French code are accessible in many sources, but I have here taken what I required from Vol. I., of Thöls Handelsrecht (sixth edition, Leipzig, 1879). From the same source, I have taken the history of the German code. Concerning the Italian code, I have used the Official Report of the Minister who presented it, and the "Diritto Commerciale Italiano" of Professor Marghieri (Naples, 1882); and concerning the Swiss code, "Das Schweizerische Obligationenrecht mit Allgemeinfasslichen Erläuterungen" of Professors Schneider and Fick (second edition, Zurich, 1883).

From this short notice of the French, German, Italian, and Swiss codes, it will be seen how much has been done in the rest of Europe, while we have been doing little or nothing. In Europe, codification has been truly a burning question. It will have been noticed also that its field has extended from Europe over the whole civilised world, with the important exception always of the parts inhabited by the Anglo-Saxon race. In codification, it is Great Britain and its Colonies and the United States of America which are not to the front. In the latter great progress has, however, been made in the codification of many branches of the law, though hitherto nothing has been done towards making a commercial code. The cause of this is probably much the same as that which so long impeded codification in Switzerland. In the United States what has been codified has been the laws of the individual States by their separate Legislatures; and probably in America there will be no code of the commercial law till power is given to the Government at Washington to frame one. But in the United Kingdom and its Colonies we have hitherto done almost nothing at all in the way of codification. In this matter we occupy the position—which is always one of some distinction—of being behind every other civilised nation.

There are lawyers who will tell you that it is unnecessary to do anything, and that the rest of the world, in running after codification, have been wasting their time. They ask you to believe that the labour which statesmen and jurists have so persistently given in other countries to reducing their laws to their simplest form has been thrown away. If you ask the inhabitants of those countries you will get a different answer. They will tell you that many advantages have accrued from codification, and that, in particular, commercial codes have greatly facilitated business and diminished litigation. They are proud of their codes, and so content with them that, so far as I know, there has never been a hint at any nation which had got a code going back to the old uncodified law. It may be said that we cannot require a code, our commerce having without one, attained proportions greater than the commerce of any other country. It may freely be admitted that no other country has a commerce like that of the

United Kingdom, but it must be the most illogical of heads that can trace any connection between an extensive trade and a confused collection of laws; and though foreigners may not have such a vast trade as ours, still Hamburg, Antwerp, Marseilles, and Trieste are by no means cities of the dead, and the transactions there are surely extensive enough to enable the merchants to judge whether they have gained or lost by codification. The objection that codification cramps the law and prevents the introduction of necessary amendments is quite unfounded. In codes there is as free and ample a recognition of the customs of merchants as there is in uncodified laws; and though there certainly was once an idea entertained that a code was to be the end of all future legislation, it is now recognised that no code can pretend to be final. The law laid down in a code is subject to development by the course of decisions, and to alterations and corrections from time to time by the course of legislation; but whether for the one purpose or the other the clear and distinct provisions of a code are, as a commencement, infinitely preferable to the uncertain sound given by uncodified laws.

I cannot imagine any intelligent person disputing that the laws of Great Britain are in a condition eminently requiring codification. Any one who knows the bulk to which the statutes extend, the innumerable and ever-increasing volumes of decisions, and how obscure and contradictory these sources often are, must admit that the reduction of them to a code would be of the greatest benefit. Even the professional jurist, with all the skilled appliances he can command, has difficulty in attaining any clear idea of the whole law upon any particular subject, and room is left for an enormous amount of litigation. Where laws are reasonably distinct, there ought seldom to be litigation, except where facts are in dispute; but it is a matter of every-day knowledge that tedious litigations are still conducted in this country over the first principles of commercial law. It is hardly possible, without seeming to exaggerate, to show the expense of settling principles by litigation. If you take any ordinary legal treatise—say Benjamin on Sale—there are single lines in it which must have cost hundreds of pounds to settle. According to foreign experience, the great bulk of such litigation has been unnecessary.

No doubt the cost of a code would be something, but it would be inconsiderable compared with the amount we spend on avoidable litigation, and it would fall upon the nation at large and not upon the individuals who are unfortunate enough to be victims of a legal ambiguity.

It has been said that it is impracticable to frame a commercial code for the United Kingdon. It is said that the differences between the laws of England and Scotland are too radical to be overcome, and that our law is so enormously complicated that no skill could present it in a simple form.

It is a complete misapprehension to represent the differences between Scotch and English commercial law as radical. There are many branches of our laws of which that remark might truly be made, but the commercial laws of both countries come from the same source. Both come from what is known as the Law Merchant, which was founded upon the customs of merchants in force throughout Europe. In commercial law the judges of all countries have always endeavoured to rise above merely local considerations, and so to regulate their decisions that the scope of commerce between nations might not be checked. The commercial law of England and Scotland is thus substantially the same. The principal differences which had crept in were removed in 1856; and—though there are still many differences in outward appearance, caused by the different sources from which our respective laws upon other points have come,—in all the leading provisions, Scotch and English commercial law is identical, and in our courts English decisions on it are of almost equal authority with our own. The differences among the various old provinces of France; between north and south Germany; and between French and German Switzerland, as regards commercial law, were vastly greater than anything which our code-makers would have to encounter.

The objection that the mass of our law is too extensive for codification loses all force the moment it is examined. It may be admitted that the number of decisions in the United Kingdom has been so great that the commercial law of this country is more fully developed and goes more into detail than that of any other country; but the convenient exposition of details is

only a question of time and of patient arrangement. With a good logical order to follow, with proper subdivision, proper tables of contents, and proper indices, there is no reason in the world why even a very large collection of laws should not be as easy to consult as a small one. But the difference in extent between our commercial law and the foreign laws is not nearly so great as people would have us believe. In the law of bills of exchange the number of precedents settled by our Courts is relatively quite as great as in any other branch of our law. But when the law of bills of exchange came recently to be codified, the British code was neither greatly larger than the codes of other countries, nor large in itself. It is perhaps twice the bulk of the Italian code of bills, and is somewhat larger than the German code. Nevertheless the whole of it is contained in less than forty moderately-sized octavo pages; and though the code of the whole of our commercial law were to be proportionately as large, it would still form a very moderately-sized octavo volume. The fact that our law is well developed in detail is rather an encouragement for us to go on with its codification than the reverse. It supplies the strongest reason why we require codification, and as the substance of our law is sufficiently good, the probability is that the British code, although the last, might be the best of the codes of the civilized nations.

The best reply, however, to those who say that there cannot, and ought not to be, a commercial code for the United Kingdom, is that an important part of our commercial law has already been codified, that it has been well done, and that it promises to be of great public advantage. As you are aware, the law of bills of exchange was codified in 1882. The law of bills is a considerable portion of every commercial code. It forms about a tenth of the Italian code, about a sixth of the Swiss code, and about a fourth of the non-maritime portion of the German code. From what has been done in it, it is fair to judge what is practicable in other branches. A short notice, therefore, of the Bills code, and of how it came to embrace the United Kingdom, will not be out of place. That code differs from all other codes in being the work, not of a Government, but of private bodies. It was undertaken by the Bankers' Institute and by the Associated

Chambers of Commerce. When introduced into Parliament, it was applicable to England and Ireland only. When I saw it, it seemed to me that we had arrived at a turning point. If the code of bills were to be allowed to pass with that limit, it would form a precedent for the other portions of the commercial code, and might have delayed for a generation the framing of a code for the United Kingdom. If the English got their law alone codified, the code would be certain to contain so many English peculiarities that the Scotch would be averse to adopt it, and the English, once their law was settled, would be unwilling to allow its revision so as to make it more generally applicable. Fortunately, the composition of the English draft code of bills was such as to involve, in its adaptation to Scotland, no serious difficulty. Its draftsman, Mr. M. D. Chalmers, had adopted an arrangement thoroughly logical and natural, and his language was throughout characterised by the greatest lucidity. The draft was a new departure for England, and compared in point of merit with the drafting of the best foreign codes. Having myself an admissible claim to be heard upon the law of bills of exchange, and finding that, although the bill had been two successive years before the House of Commons, no one else apparently was moving in the direction I thought desirable, I addressed myself to Sir John Lubbock, who had introduced the bill, and I brought under his notice the desirability and practicability of extending it to Scotland. From Sir John Lubbock I received a favourable reply, and an inquiry whether I would be willing to give information as to the points on which the bill, as introduced, might require modification. At the same time he obtained for the Select Committee, to which the bill had been remitted, the assistance of the Solicitor-General for Scotland, and of some Scotch members skilled in commercial affairs. After I had replied to Sir John Lubbock, stating my willingness to give the assistance required, I had a communication from Sir Farrer Herschell, the chairman of the Select Committee, detailing the form in which the information was wished. In consequence of that request I prepared for the Committee a report, consisting of two parts. In the first, I explained generally the various differences between the English and the Scotch laws of bills, and, in the second, I went over each

clause of the draft, and pointed out the respects in which it would require modification. That report was a somewhat lengthy document, filling several pages of folio print, and it contained, for the information of the Committee, some notes as to the provisions of the French and German laws on those points on which the English and the Scotch differed. The report was circulated amongst the Committee, and I was examined before them. The Committee had no difficulty in coming to the conclusion that the application of the code to the United Kingdom was both desirable and practicable. The amendments necessary for that purpose were drafted by the Solicitor-General for Scotland, and in that work, I may add, he had what assistance I could give him. The result was a code applicable to the United Kingdom. I may say that, even as far as England was concerned, the revision, so as to include Scotland, was a benefit, because a few more English technical terms were got quit of, and some few improvements on the substance of its law were made. The Select Committee, when they found any point of difference between the law of England and Scotland directed themselves with impartiality to determining which was most in keeping with the general custom of merchants, and would be best for commerce. The result of their labours was so successful that there now remains only one point on which it was found that the English and Scotch laws could not be reconciled, and that is a point of no very great importance, as it can come into force only in the case of a bankruptcy. There are, it is true, three specially Scotch clauses in the code, but one of these deals only with the matter of holidays, which, for ecclesiastical reasons, could not be the same in both countries; and another is a valuable addition to the proper field of the bill, made upon the recommendation of Lord Shand, with the view of rendering the law of evidence upon bills in Scotland more equitable and more in accordance with the law of England. The only Scotch clause in the code which really represents a difference with the law of England is that which deals with the effect of a bill when presented for acceptance in constituting an assignment of the drawer's funds in the drawee's hands.*

* 45 and 46 Vict., c. 61, §§ 53 (2) and 100; also, § 14 (b), when read in connection with the Bank Holidays Acts referred to in it.

The period during which the Bills code has been in force—some eighteen months—is perhaps too short to found a final opinion upon, but the difference between the amount of litigation on bills before the code and that since is so great as to be scarcely capable of explanation in any way except by the influence of the code itself. I have taken ten recent years of the professionally reported cases on the law of bills in England and in Scotland immediately prior to the code, and as cases are only reported for the profession when questions of law are involved, those reported cases are necessarily all litigations upon the law of bills. I find that in the ten years there were just 101 reported cases in the Supreme Courts of England and Scotland on the law of bills, giving an average of ten cases in the year. During the year which immediately followed the passing of the code I find that there were in all four reported cases, and in the half-year which has since elapsed I find that there are three reported cases on the law of bills.* These figures show a very material diminution, but when the cases that have been decided since the code are analysed, their import becomes more significant. Out of the seven cases reported since the code, I find that five are cases under the old law, which had been continued in the Courts of Appeal from dates prior to the passing of the code. I find also that of the two others one arose upon the law of prescription, and the other arose upon the law of process on bills of exchange—branches not included in the code. It is certainly a very curious circumstance that during the eighteen months since the Bills of Exchange Code was passed, there has not come before the Supreme Courts of England or Scotland a disputed case as to the legal effect of any bill of exchange. There has been ample time for such cases, because disputes about bills come quickly to the front, and there have been, doubtless, cases enough

* The ten Scotch years here mentioned are those from 1867 to 1877, which are given in the Digest of Messrs. Beatson Bell and Lamond. The ten English years are those contained in the "Law Journal" Digests for 1870 to 1875 and for 1875 to 1880. I took those years because I could conveniently get the figures for them. The figures for the period since the passing of the Bills code have been taken, for England, from the "Law Journal" Reports, and for Scotland, from the Session Reports (fourth series), so fas as published, and subsequently from the "Scottish Law Reporter."

upon them in which questions of fact were in issue. In the local Courts, where—in Scotland at least—the mass of litigation on bills always occurs, there has probably been a proportional diminution, though probably there is not the same entire absence of such cases, as the whole number of cases in the local Courts on bills is much larger, and points are sometimes argued in them which would not be raised in the higher Courts. The effect of making the law of bills definite, and making it readily accessible to those concerned in it, has already shown itself, and I say that what we have done in codifying the law of bills of exchange is the greatest encouragement we could possibly have for going on to codify the rest of the commercial law.

A complete commercial code should in theory contain all provisions of the law relating to both the production and distribution of articles of wealth. It is found impossible to make it so extensive. Some of the laws affecting the production of wealth, such as the Factory Acts, and some of the laws regulating its distribution, such as the Merchant Shipping Acts, deal very much with details of an administrative character which are liable to change from time to time, and are therefore better embodied in separate enactments. Excluding, therefore, from the code everything of that kind we find, nevertheless, a very extensive field for it. A commercial code would, in the first place, deal generally with the forms for contracting, assigning, and discharging commercial contracts. In the next place it would deal specially with the law of sale, of principal and agent, of principal and surety, of partnership, of employer and employee, of the letting and hiring subjects (including immovables) used in commerce, and with all other commercial contracts. The law as to carriers, by sea and land, and as to insurance—fire, life, and marine—would, of course, be included. It would end with the law as to the prescription or limitation of commercial obligations. The law of banking and of currency having a department for itself, and the law of bankruptcy being better treated separately, would not be included.

Supposing such a code to be desirable and possible, the practical question arises, how are we to set about getting it? I accepted with alacrity the invitation of a Chamber of Com-

merce to address its members on this subject. It depends altogether upon the merchants of Great Britain whether and when the commercial law is to be codified. The merchants are mainly interested in the question; they can understand it and recognise its importance; and they have sufficient political power to carry out their wishes. It is, therefore, for them to move if they desire a code. If they wait till others move they may wait long enough. I would not like to say how long they may have to wait, if they wait till the lawyers take it up. It is not many years since the project would have encountered strong opposition from the legal profession. Now it will not be opposed, and it will even find active support from some of the most eminent and accomplished members of the body, but it is too much to expect that lawyers will of their own motion take up and carry through a reform, the first effects of which will be to popularise their special knowledge, and probably somewhat to diminish their profits. I believe lawyers will have public spirit enough not to let their interests stand in the way of a public improvement, but more cannot be asked from them, and they cannot be expected to urge the reform, if those whom it will benefit make no sign. In this country it cannot be expected that statesmen are to take the initiative. In other countries, statesmen often act in advance of public opinion, but our free representative institutions compel statesmen to wait until public opinion is ripe for action. I apprehend, however, that there is no statesman who will not give the most cordial support to a proposal for a commercial code if it is urged upon him by the voice of the mercantile community.

It may be said that the time is not opportune, there being too many other "burning questions" in the field. I would submit that no time could be found more convenient. As Professor Max Müller pointed out, this question comes in importance immediately after the representation of the people. That question is being solved now, and when it is solved the time will have come for a code to be enacted; but while that question is being solved, and our public men are discussing it, there is no reason why the Commission for codification should not be working. It would not occupy much of the time of the Government to issue a Commission for the codification of the commercial law. That Commission

would probably take a few years to draft the code and ripen it for legislation, and by the time the draft was ready, Parliament would be open for its being enacted into law. You may depend upon it that you will not find any time more convenient than the present for bringing forward your request for a Commission. I am taking it for granted that so great a work as the codification of the whole commercial law could be done in no other way than by a Government Commission. The fact that the Government has failed to pass its criminal codes is no reason why we should not go on with the commercial code. As these criminal codes, after all the labour that was spent on them, were not applicable to the United Kingdom, I for one do not regret their loss. But as they raised matters of contention, they were beset with difficulties which a commercial code would not encounter. The failure of the Partnership code to get a hearing is only an instance of the mistake of mixing up with codification other law reforms, however good in themselves, and of supposing that private bodies, however influential, can always be relied on for doing what is properly Government work. In asking for the Commission I would respectfully ask permission to guard you against one error which some of the advocates of codification in this country have committed. They have asked too much. It is at present merely a dream to imagine a code of commercial law for the whole civilised world. The essential thing in the meantime, and the only practicable thing is for each country to codify its own law. When the different States of the world have done so it will be time to think of welding the various codes into one law. A code of commercial law for the United Kingdom would of itself go far towards solving the problem of the universal code; as it should form an integral part of our programme, that opportunity should be given to our colonies to join in our code so as, if possible, to make it a code for the British Empire.

Assuming then that you are satisfied that you are the parties to move, that this is a suitable time for moving, and that you have settled what you are to ask, there remains for consideration only the question how your project can best be carried out. On the Commission it would be necessary to have not only lawyers representing the different systems of the United Kingdom, but

merchants. The codes being intended to be understood by merchants, it is well to take them along with the work from the commencement, and they are always able to give practical information as to the matters which require to be regulated. The Commission would have power to employ draftsmen and, where necessary, legal specialists to revise the draft. The code would be drawn first for England only, and would embody the existing law, and not any improved or amended system—the powers of the Commission as to improvements on the substance of the law being limited to suggestion. When drawn for England, it would probably suit Ireland. The fact of the code being drawn for England first would be no hindrance to its adoption to Scotland. As I have already had occasion to point out, a necessary peculiarity of a code is that it follows the natural order of the events occurring in the transactions with which it deals; and when so drawn, the arrangement is just as suitable for Scotland as for England. As soon as the code was drafted for England, it would be revised with a view to its adoption for Scotland, and each clause would be carefully gone over, so as to determine how to deal with the differences between the two systems. These differences would fall into classes—those which were apparent, and those which were real. The great bulk would be found to be in the former class, and it would be found that by mere changes of expression—such as the turning of a technical word into a word in ordinary use—the apparent differences would be eliminated. Where the differences were real, it would be necessary for the Commissioners to draft parallel clauses, the one showing the English law and the other showing the Scotch law. It would also be for them in such cases to make their suggestions as to the way of getting quit of the differences, either by assigning the preference to the one rule over the other, or by adopting some middle course. In this way the draft code would be completed. When it was completed it would be issued for the consideration of the public, and doubtless would be subjected to severe criticism. The bodies to whom it should be specially submitted would be the various courts of law and judges, the faculties of law in the Universities, the legal corporations, the city and county authorities, and the chambers of commerce. It should also at this time be

communicated to the colonial governments, and their co-operation in its final revision invited. In framing most of the foreign codes, it has been the practice at this stage to submit the drafts to eminent jurists of other countries, and in that way valuable suggestions have been obtained. The reports of the different bodies and persons consulted having been obtained, the Commission would again revise its draft, and it might be expected that very material changes would be made. The first published draft of the Swiss code was changed from end to end in consequence of the suggestions which were made, and our Commission should not be slow to adopt improvements in whatever quarter they might originate. When the code had been revised it would be for the Commission to determine whether it should again be issued for further consideration to the different bodies concerned or be reported to Government. When the draft came ultimately before Parliament, it would be taken over in the usual course of procedure by a Grand Committee or by a Select Committee. Parliament alone should have power to make ammendments on the law; but after its amendments had been introduced the code would require to be submitted again to the Commission for a thorough verbal revision. When returned from the Commission with this done, it would be ready for adoption *en bloc*.

I have certainly indicated a considerable amount of labour to be gone through before a code of commercial law can be completed, but similar labours have been gone through elsewhere, and the talent and patience to undertake the toil can be amply found in our country. It is hardly safe to venture upon a prophecy as to the length of time the framing of the code might take, but I think that there should be comparatively little difficulty in accomplishing the whole within a period of five years. I need not say that if the code were made it would be one of the greatest legal monuments of its generation; that it would be a testimony to the enlightenment and public spirit of the merchants of this country, and in the next place to the talents and learning of our jurists. I certainly expect that the highest legal talent will be available for the making of the code, as I cannot but think that it is a mistaken view which in this country imagines that the settling of the terms of the law by Acts of Parliament is a matter

comparatively easy or unimportant, properly enough left to laymen with little legal help, while the highest legal talent is only to be called in after inferior drafting has caused practical difficulties. I would bring in the best legal talent from the beginning, and I would assign as high honour to those who settled (in the code) legal principles in lucid language for the benefit of the whole community, as I would to those who settle them (in a suit) for the benefit of individuals. I can conceive no higher purpose to which legal talent can be devoted than that of placing the laws of the country in their clearest and most convenient form, so that those who have to obey them may understand them, and so that litigations, with all the ruin they bring in their train, may, as far possible, be avoided. It may be that there are greater reforms which can occupy the attention of public men, but a reform such as the one I advocate, which would facilitate commerce in this country, and ultimately throughout the world, is not one lightly to be delayed, for commerce is the handmaid of civilisation, and the furthering of it is the furthering of peace and goodwill among men.

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